

BEFORE THE SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

JOSEPH MCGIVNEY.

Appellant.

v

JOY IVERSON, PIERCE COUNTY,  
and STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY.

Respondents

SHB NO 94-29

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER

This matter comes before the Shorelines Hearings Board ("Board") on a motion to dismiss filed by Joy Iverson. The Board was comprised of Robert V. Jensen, Richard C. Kelley, James A. Tupper Jr., Bobbi Krebs-McMullen, Dave Wolfenbarger and Robert Patrick. Mr. Tupper presided for the Board.

The motion was decided on the written record filed by the parties without oral argument. Based on the Board's review of the Motion and Memorandum to Dismiss Appeal, Appellant's Response to Motion to Dismiss, Declaration of Joseph F. Quinn, Respondent's Rebuttal Memorandum in Support of Motion to Dismiss and all documents attached and incorporated in these pleadings, the Board enters the following:

FINDINGS OF FACT

I

On January 24, 1994, Pierce County transmitted to the Department of Ecology a shoreline variance permit that had been issued to Joy Iverson. The Department of Ecology approved the variance and transmitted its decision to Pierce County and Ms. Iverson on March 1, 1994. Sometime in mid-April, 1994, the appellant or his attorney contacted Pierce County to inquire as

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2 to the status of Ecology's review of the variance permit. At that time the appellant was informed  
3 that the permit had been approved. The appellant thereafter received a copy of the Ecology  
4 determination on May 2, 1994. The notice of appeal in this case was filed with the Board on  
5 May 4, 1994.

## 6 II

7 At no time while the permit application was pending before Pierce County or the  
8 Department of Ecology did the appellant or his attorney request that they receive a copy of the  
9 final determination by the state agency. The appellant had ample opportunity to do so. Ms  
10 Iverson filed her application for a variance permit on July 28, 1992. Her application was subject  
11 to extensive public notice and comment. The appellant in fact participated in three public  
12 hearings before a Pierce County hearing examiner related to the permit application. After the  
13 hearing examiner issued his decision on July 19, 1993, the appellant filed a request for  
14 consideration. After the permit was ultimately approved by Pierce County the appellant's  
15 attorney sent a detailed letter to the Department of Ecology objecting to the permit. There is no  
16 record that appellant ever requested that the county or the Department of Ecology provide notice  
17 of the final determination on the permit. Appellant has not submitted any facts that would  
18 establish that such a request was made.

## 19 III

20 Any conclusion of law deemed to be a finding of fact is hereby adopted as such.

21 Based on the foregoing findings of fact, the Board enters the following

### 22 CONCLUSIONS OF LAW

#### 23 I

24 The time period for filing an appeal to this Board is thirty days from the "date of filing."  
25 RCW 90.58.180(1). Date of filing, with regard to a permit for a variance, is defined at RCW

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1  
2 90 58 140(6) as the date a decision by the Department of Ecology is transmitted to the local  
3 government. The Department of Ecology is required to provide notice to the local government  
4 and the applicant as to the date of filing. RCW 90 58 140(6)

5 II

6 The date of filing in this case was March 1, 1994. The appeal period accordingly expired  
7 on March 31, 1994. The appeal period is jurisdictional and may not be waived by the Board.  
8 Flynn v. Kirkland, SHB No. 78-30. See Graham Thrift Group v. Pierce County, 75 Wn. App.  
9 263, 267 (1994). North Street Associates v. Olympia, 96 Wn. 2d 359, 364 (1981).

10 III

11 Since the notice of appeal in this case was filed sixty-four days after the date of filing it  
12 was untimely and this case should be dismissed for lack of jurisdiction, Appellant argues,  
13 however, that his involvement in the permit application process should be deemed to be a request  
14 for notice under RCW 90 58 140(4)(b)(iii) and WAC 173-14-130. This argument is not  
15 persuasive. WAC 173-14-070 and PCC 20 76 220 require that interested parties notify the local  
16 government of their desire to receive a copy of a final decision on a shoreline permit application.  
17 WAC 173-14-130 in turn requires the local government to provide notice of a Department of  
18 Ecology determination on a variance or conditional use permit to those persons who have  
19 requested notice under WAC 173-14-070. As originally enacted, the Shoreline Management Act  
20 ("SMA") required that notice of final determinations be given in the same manner as RCW  
21 90 48 170. Laws of Washington, Ch. 286, Sec. 14(3) (1971). RCW 90 48 170 provides that  
22 notice of final determinations on permit applications under the water Pollution Control Act be  
23 given to all parties who either submit comments on a permit application or specifically request  
24 such notification. This is longer the law under the SMA. RCW 90 58 140(4). The effect of this  
25 amendment to the SMA is to impose a clear obligation on parties to specifically request notice of

26 FINAL FINDINGS OF FACT,  
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ORDER

1  
2 final determinations on permit applications, participation in a permit application proceeding  
3 alone is no longer sufficient to entitle a party to notice

4 IV

5 The appellant additionally argues that the certification of his appeal by the Attorney  
6 General confers jurisdiction on the Board notwithstanding the fact that his appeal was untimely  
7 The appellant specifically cites to language in the certification that "[t]he appellant appears to  
8 have made a good faith effort to be informed of the status of the permit through its transmittal  
9 from the County to the Department of Ecology " The certification provides, however, that the  
10 jurisdiction to hear this appeal should be decided by the Board The certification of an appeal by  
11 the Department of Ecology or the Attorney General is limited to the single issue of whether the  
12 appellant has valid reasons to seek review RCW 90 58 180 The certification is not intended to,  
13 nor does it function to, control the Board's jurisdiction Moreover, the Department of Ecology  
14 and Attorney General may not waive jurisdictional requirements for noting an appeal established  
15 by statute any more than could the Board

16 V

17 The Board accordingly concludes that notice of appeal was untimely and that this matter  
18 should be dismissed

19 VI

20 Any finding of fact deemed to be a conclusion of law is hereby adopted as such

21 Based on the foregoing findings of fact and conclusions of law, the Board enters the  
22 following


23 ORDER

24 IT IS HEREBY ORDERED that appeal of Joseph McGivney is DISMISSED

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26 FINAL FINDINGS OF FACT  
27 CONCLUSIONS OF LAW AND  
ORDER


DONE this 15<sup>th</sup> day of November, 1994

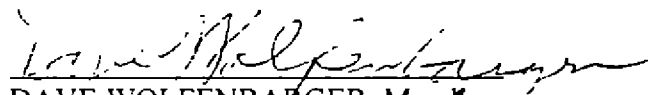
SHORELINES HEARINGS BOARD

  
JAMES A TUPPER JR Presiding

  
ROBERT V JENSEN, Chairman

  
RICHARD C KELLEY, Member

  
BOBBI KREBS-McMULLEN, Member

  
DAVE WOLFENBARGER, Member

  
ROBERT PATRICK, Member

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